NO. CV 10 6006338S	:	SUPERIOR COURT
REDDING LIFE CARE LLC	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
TOWN OF REDDING	:	NOVEMBER 30, 2011

MEMORANDUM OF DECISION

The plaintiff, Redding Life Care, LLC (Redding Life), the owner of real property located at 100 Redding Road in the town of Redding (town), brings this appeal pursuant to subsection (c) of General Statutes § 12-63c, contesting the assessment of a 10% penalty authorized by subsection (d) therein. The assessor imposed the 10% penalty when the plaintiff failed to comply with his request for financial information "disclosing the actual rental and rental-related income and operating expenses applicable" to the subject property pursuant to subsection (a) of § 12-63c.

In preparation for the publishing of the October 1, 2009 Grand List, the assessor mailed to Redding Life a request for financial information pursuant to § 12-63c (a) on March 30, 2009. The request was placed in an envelope with the town's address preprinted in the upper left corner. However, it is undisputed that the assessor incorrectly addressed the envelope to Redding Life at 234 State Street in New Haven, which is an unrelated vacant lot, instead of Redding Life's correct mailing address of 234 Church Street in New Haven. Because the assessor received no response from Redding Life, he

mailed Redding Life a reminder to the same incorrect address.

The town argues that the plaintiff had the burden to prove that the two mailings, despite being incorrectly addressed by the assessor, were not delivered to the plaintiff. In other words, the town puts the burden on the plaintiff to prove a negative, that Redding Life did not actually receive delivery of the two mailings from the assessor. This, however, places an improper burden on the plaintiff when, in fact, it was the assessor himself who incorrectly addressed the envelopes twice.

There is no evidence to support a finding that Redding Life received delivery of the 2009 mailings from the assessor requesting income and expense figures. This is in contrast to Redding Life's full compliance with the assessor's request for information in prior instances when a properly addressed request was made to the plaintiff. See plaintiff's 10/11/11 brief, p. 10.

The assessor valued the subject property on the Grand List of October 1, 2009, at $90,568,060, which amount included a penalty of 10% added to the original assessment. The penalty amounted to approximately $150,000.

General Statutes § 12-63c provides, in relevant part, as follows:

"(a) In determining the present true and actual value in any town of real property used primarily for purposes of producing rental income, the assessor . . . *may* require in the conduct of any appraisal of such property pursuant to the capitalization of net income

method . . . that the owner of such property annually submit to the assessor not later than the first day of June, *on a form provided by the assessor* not later than forty-five days before said first day of June, *the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property. . . .*

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"(c) . . . Any person claiming to be aggrieved by the action of the assessor hereunder may appeal the actions of the assessor to the board of assessment appeals and the Superior Court as otherwise provided in this chapter.

"(d) Any owner of such real property required to submit information to the assessor in accordance with subsection (a) of this section for any assessment year, who fails to submit such information as required under said subsection (a) or who submits information in incomplete or false form with intent to defraud, *shall be subject to a penalty equal to a ten percent increase in the assessed value of such property for such assessment year. . . .*"

(Emphasis added.)

Both the assessor and the board of assessment appeals denied Redding Life's request for relief from the imposition of the 10% penalty.

Redding Life's basic claim for relief is that it did not receive notice from the assessor pertaining to the request for financial information by the assessor.

Finding, as the court has, that Redding Life did not actually receive delivery of the assessor's mailings, the issue is whether Redding Life constructively received the assessor's mailings because the subject incorrectly addressed mailings were not "returned to sender," i.e., returned to the town at its preprinted address on the envelope. On this basis, the town claims that there is a presumption that the mail was delivered to Redding Life.

The law in this case is governed by the "mailbox rule," that an envelope properly stamped and addressed, sent through the postal service, raises a rebuttable presumption that the envelope will be received by the addressee. See Butts v. Bysiewicz, 298 Conn. 665, 677 n.8, 5 A.3d 932 (2010).[1]

In the present case, the element of being properly addressed is missing, in which case, the presumption of delivery cannot be made. On the contrary, in this case, no claim can be made that 234 State Street in New Haven is in fact 234 Church Street in New Haven.

There is no requirement on the part of the owner of income-producing property to

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[1] "It is virtually common knowledge in this region today that U.S. mail . . . is no longer as efficient as it once was. Indeed, the proliferation of delivery services and their generally accepted use by attorneys as well as the general public warrants reexamination of the rule that service by ordinary mail alone is effective on deposit of the document in the mail." Stegmeier v. St. Elizabeth Hosp., 239 N.J. Super. 475, 482 n.5, 571 A.2d 1006 (App. Div. 1990).

voluntarily furnish an assessor with rental income and expense information. This is so because § 12-63c is, by its language, permissive in nature. Section 12-63c provides authority for the assessor to request such information when the assessor is conducting an evaluation of the property using the income capitalization approach.

In requesting income and expense information from the property owner, the assessor is required to furnish the property owner with a form to be filled out and returned to the assessor within a certain time frame.

The key words in § 12-63c that supports this conclusion are "the assessor . . . *may*[2] require in the conduct of any appraisal of such property pursuant to the capitalization of net income method . . . that the owner of such property annually submit to the assessor . . . on a form provided by the assessor . . . the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property. Submission of such information may be required whether or not the town is conducting a revaluation of all real property pursuant to [§] 12-62."[3] (Emphasis added.)

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[2] See Small v. Going Forward, Inc., 91 Conn. App. 39, 44, 879 A.2d 911 (2005), identifying "may" as a permissive term.

[3] The legislature significantly changed General Statutes § 12-63c following the issuance of PJM & Associates, LC v. Bridgeport, 292 Conn. 125, 147 n.1, 971 A.2d 24 (2009).

The old version of § 12-63c (a), as reflected in the PJM decision, provided as follows:

Two important elements, as applied to this case, are contained in § 12-63c, as amended: (1) the assessor has discretion whether to require a property owner to submit information regarding actual rental and rental-related income and operating expenses applicable to its property and (2) the subject property must be "real property used primarily for purposes of producing rental income[.]"

The town has failed to comply with either of these two elements. First, pursuant to § 12-63c, there is no obligation upon a property owner to voluntarily furnish the assessor with rental and rental-related income and operating expenses related to its property. Such information is only required of the property owner once the assessor has made a request for such information by supplying the property owner with "a form provided by the assessor." The assessor's failure to mail this form to the plaintiff's correct address, twice, negates any implied delivery to the plaintiff.

Second, the subject property is a Continuing Care Retirement Community (CCRC) providing accommodations and health care services to the elderly. It is not, as

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"In determining the present true and actual value in any town of real property used primarily for purposes of producing rental income, the assessor . . . *shall* have power to require, subject to the conditions in subsection (b) of this section, in the conduct of any appraisal of such property pursuant to the capitalization of net income method, as provided in section 12-63b, that the owner of such property annually submit or make available to the assessor not later than the first day of June, on a form provided by the assessor, the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property." (Emphasis added.)

recited in § 12-63c, "real property used primarily for purposes of producing rental income[.]"

Accordingly, the plaintiff's appeal, contesting the 10% penalty imposed upon it for failure to comply with the provisions of § 12-63c, is sustained, with the 10% penalty ordered set aside. No costs are awarded to either party.

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Arnold W. Aronson
Judge Trial Referee